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In re Application of
OLIVE, Scott
Application No.: 09/462,717
PCT No.: PCT/AU98/00525 : DECISION ON PETITION
Int. Filing Date: 08 July 1998
Priority Date: 08 July 1997
Attorney's Docket No.: 2832/FBR
For: SLOT MACHINE GAME AND SYSTEM WITH
IMPROVED JACKPOT FEATURE

This decision is in response to the "Petition Under 37 CFR 1.10(c) or 1.10(d) to Correct 'Date-In' and Remove Notice of Abandonment" filed 19 September 2000, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment and request that the national stage application papers be accepted as filed on 10 January 2000. No petition fee is required.

BACKGROUND

On 08 July 1998, applicant filed international application No.PCT/AU98/00525, which claimed a priority date of 08 July 1997. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 January 1999. A DEMAND for international preliminary examination was filed 08 February 1999 prior to the expiration of 19 months from the priority date. Accordingly, the thirty-month period for submitting the basic national fee for entering the national stage in the United States of America expired at midnight on 10 January 2000. (08 January 2000 was a Saturday and 09 January 2000 was a Sunday.)

The application was abandoned on 11 January 2000.

On 11 January 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia: the authorization to charge the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an executed declaration; preliminary amendment; and a verified statement (declaration) claiming small entity.

On 21 March 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) and Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917) indicating that the declaration was not executed in accordance with 37 CFR 1.66 or 37 CFR 1.68. The notification set a one-month time limit to respond.

On 10 April 2000, applicant filed a "Response to Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)" which was accompanied by executed declaration and power of attorney.

On 13 June 2000, the PCT Legal Office mailed Communication and Notification of

Abandonment.

On 19 September 2000, applicant filed present petition stating that, "we are filing this petition under 37 CFR 1.10(c) or 1.10(d) to amend the 'date in' to reflect the actual date the undersigned deposit with the United States Postal Express Mail under 37 Cfr 1.10(a) the application and requisite national fee."

DISCUSSION

A review of the present petition and application reveals that Document 1 referenced in the petition is not included.

Pursuant to 37 CFR 1.10(c), Petitioner has not submitted a copy of the "Express Mail" customer receipt bearing the same "Express Mail" mailing number as identified in the certificate under 37 CFR 1.10 that accompanied the application papers showing that the original papers were, in fact, deposited as "Express Mail" with the United States Postal Service on 10 January 2000. Thus, a discrepancy has not been shown to exist as required by 37 CFR 1.10(c).

37 CFR 1.10(d) provides as follows:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Petitioner has not provided a satisfactory showing under 37 CFR 1.10. No corroborative evidence that came into being after the deposit and within one business day of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS has been presented.

Applicant has not provided a copy of the Express Mail Label. Moreover, no corroborative evidence from the USPS has been provided to indicate the time of the last pickup at the location of the mailbox. In this regard, a statement from a USPS employee having firsthand knowledge of the time of the last pickup on 10 January 2000 is the type of evidence that should be provided, if available. Thus, the evidence of record is insufficient to establish that on 10 January 2000 the correspondence was deposited in

"Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

Thus, petitioner has clearly not provided a satisfactory showing under 37 CFR 1.10(d).

Since the copy of the national application papers filed with the petition are not currently entitled to a 10 January 2000 receipt date, the file record is presently construed as indicating that the basic national fee was not paid until 11 January 2000, which was beyond the expiration of 30 months from the priority date.

For the reasons above, the application is currently held to be abandoned after midnight of 10 January 2000 for failure to timely pay the basic national fee.

CONCLUSION

For the reasons discussed above, applicant's request that the office accept the national application papers as filed on 10 January 2000 is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.182." No petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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